

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jeffrey Mulinelli (S)	Team: Squad #7	CCRB Case #: 201804338	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/25/2018 10:00 AM	Location of Incident: 30 Central Park West	Precinct: 18	18 Mo. SOL 10/25/2019	EO SOL 10/25/2019	
Date/Time CV Reported Wed, 05/30/2018 5:58 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 05/30/2018 5:58 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. CPT Thomas Smith	00000	939495	MTN PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM James Joyce	21182	951856	MTN PCT

Officer(s)	Allegation	Investigator Recommendation
A.CPT Thomas Smith	Discourtesy: Captain Thomas Smith spoke discourteously to § 87(2)(b)	
B.CPT Thomas Smith	Abuse: Captain Thomas Smith searched the vehicle in which § 87(2)(b) was an occupant.	
C.CPT Thomas Smith	Abuse: Captain Thomas Smith interfered with § 87(2)(b)'s use of a recording device.	
D.CPT Thomas Smith	Abuse: Captain Thomas Smith deleted information on § 87(2)(b)'s electronic device.	

Case Summary

On May 30, 2018, § 87(2)(b) filed this complaint via the CCRB's Call Processing System.

On April 25, 2018, at approximately 10:00 a.m., Captain Thomas Smith of the 18th Precinct stopped § 87(2)(b)'s cab in the vicinity of 30 Central Park West in Manhattan. Captain Smith approached § 87(2)(b)'s vehicle and allegedly stated, "Just give me your fucking license." (**Allegation A – Discourtesy:** § 87(2)(g)). Captain Smith reportedly reached through § 87(2)(b)'s open driver's window to grab either § 87(2)(b)'s keys or her iPhone as she attempted to record the incident (**Allegations B and C – Abuse of Authority:** § 87(2)(g)). Captain Smith allegedly deleted the recording from § 87(2)(b)'s phone (**Allegation D – Abuse of Authority:** § 87(2)(g)). § 87(2)(b) was transported to the 18th Precinct stationhouse and released with four summonses.

There was no video footage available for this incident [see IAs].

Findings and Recommendations

Allegation A – Discourtesy: Captain Smith spoke discourteously to § 87(2)(b)

In her CCRB interview, § 87(2)(b) testified that Captain Smith was alone when he approached her vehicle and requested her license and registration using an aggressive tone. He also told § 87(2)(b)'s passengers to leave and get another cab, and they immediately complied. § 87(2)(b) and Captain Smith debated the validity of the stop briefly before § 87(2)(b) informed him that her documents were in the trunk. Captain Smith did not allow § 87(2)(b) to exit the vehicle to obtain her document. Rather, he said, "Just give me your fucking license and registration." Later in the same interview, § 87(2)(b) alleged that Captain Smith used this phrasing in his first request for her documents. In total, Captain Smith requested § 87(2)(b)'s documents three times. She never refused to give these items to him. She provided Captain Smith with her TLC license, which was taped to the dashboard, when he specifically requested it moments later. § 87(2)(b) did not allege that Captain Smith used any other profanity [01 Board Review].

In a phone statement, § 87(2)(b) alleged that Captain Smith told her to "Get out of the fucking car" and ordered her to provide her driving credentials. She made no mention of Captain Smith demanding her "fucking license" [06 Board Review].

§ 87(2)(b)'s Notice of Claim, which was filed on § 87(2)(b), notes that an officer aggressively demanded § 87(2)(b)'s license and registration, but it does not specifically mention any profanity [02 Board Review].

Captain Smith testified that § 87(2)(b) was yelling and screaming, and she refused to provide her license, insurance card, and registration multiple times. She never provided him with any documents, including a TLC license. Captain Smith stated that his tone was authoritative when he requested § 87(2)(b)'s document, but he did not remember whether he said, "Just give me your fucking license." He did not remember whether he used the word "fuck" or any other profanity toward § 87(2)(b) though he asserted that he does not typically speak to people in that way [03 Board Review].

§ 87(2)(g)

Allegation B – Abuse of Authority: Captain Thomas Smith searched the vehicle in which § 87(2)(b) was an occupant.

Allegation C – Abuse of Authority: Captain Smith interfered with § 87(2)(b)'s use of a recording device.

Allegation D – Abuse of Authority: Captain Thomas Smith deleted information on § 87(2)(b)'s electronic device.

In her CCRB interview, § 87(2)(b) testified that Captain Smith asked her to exit her vehicle.

§ 87(2)(g)

She first stated that she questioned why she needed to get out as well as the initial reason for the stop. She later asserted that she was in shock and did not verbally respond to Captain Smith at all. Regardless, § 87(2)(b) exited her vehicle and left the driver's door open as she stood in the area of the door jamb. § 87(2)(b) initially stated that it was at this point that Captain Smith reached into her vehicle through the open driver's window and grabbed the keys from the ignition about ten seconds after making his lone request for them. The vehicle's engine was off before Captain Smith reached inside.

Later in the same interview, § 87(2)(b) stated that Captain Smith reached into her car to retrieve the keys while she was still inside of it. At about that time, § 87(2)(b) grabbed her iPhone, which had been mounted on the dashboard, and began recording video. She held the phone at chest height as if sending a text message, and the camera was not pointed at Captain Smith. At the time, § 87(2)(b) had intended to record only audio of the interaction. Captain Smith reached through the open driver's window and grabbed § 87(2)(b)'s phone from her hand.

§ 87(2)(b) revealed that her phone, which requires a passcode, was unlocked when Captain Smith grabbed it because she had just begun recording. Although she did not see Captain Smith touch its screen, § 87(2)(b) believed that he deleted the video from her phone because Captain Smith was the only officer she observed in possession of her phone and because the video was no longer present when the phone was returned to her at the stationhouse later that day [01 Board Review].

In his CCRB interview, Captain Smith testified that although he did not remember whether he asked § 87(2)(b) to shut off her vehicle, he was fearful that she could flee the scene because she had already fled from the location at which he had initiated the stop about two blocks away. Regardless, he denied reaching into § 87(2)(b)'s vehicle to grab her keys.

Captain Smith did not remember whether § 87(2)(b) appeared to be recording the incident with her phone, nor did he recall whether he ever interfered with her ability to record. He did not believe that her phone contained any video or audio recordings of the incident, and he denied

reaching into § 87(2)(b)'s vehicle to take possession of her phone. Captain Smith did not recall whether he ever had § 87(2)(b)'s phone in his possession. He denied deleting any items from § 87(2)(b)'s phone at the scene and revealed that he did not return to the stationhouse after the incident. Captain Smith did not remember if he reached into or otherwise searched § 87(2)(b)'s vehicle for any reason [03 Board Review].

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party [04 Board Review].
- Captain Smith has been a member of service for 13 years and has been a subject in seven other CCRB complaints and 16 other allegations, of which five were substantiated:
 - 201307074 involved substantiated allegations of discourteous language and a premise entered and searched against Captain Smith. The Board recommended instructions] and the NYPD imposed instructions.
 - 201609182 involved substantiated allegations of a frisk, a search, and force against Captain Smith. The Board recommended command discipline B and the NYPD imposed formalized training.
 - § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming malicious prosecution, denial of right to fair trial, unlawful seizure, unlawful imprisonment, excessive detention, malicious abuse of process, failure to intervene, negligent hiring, negligent retention, negligent discipline, negligent training, negligent supervision, prima facie tort, illegal search, respondeat superior, violation of civil rights, violation of privacy, mental and emotional injuries, physical injuries, loss of liberty, lost income, violations of Sections 11 and 12 of the New York Constitution Bill of Rights, and various unspecified federal claims, and seeking an amount to be determined at trial as redress. There is no 50H hearing scheduled [02 Board Review].

- § 87(2)(b)
- [REDACTED]

Squad No.: 7

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date